Lutpi bin Ibrahim & Anor v Ketua Polis Negara

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–52 OF 1997
CHIN FOOK YEN J
20 DECEMBER 1997

Evidence *— Documentary evidence — Undated document — Certificate of designation of power under s 73(3)(c) of the Internal Security Act 1960 by Inspector General of Police — Whether undated certificate was admissible — Whether court may presume that judicial and official acts have been regularly performed — Whether court should allow adjournment to file further affidavit to clarify the matter — Whether court should act under s 425 Criminal Procedure Code (FMS Cap 6) to summon witness to testify in order to cure the infirmity of certificate — Evidence Act 1950 s 76*

Both applicants were arrested and detained by the respondent under s 73 of the Internal Security Act 1960 ('the ISA'). Applications were filed to impugn the legality of the arrest and detention of the applicants. It was submitted that exh 'SP–1' in respect of the applicants, viz the designation power under s 73(3)(c) of the ISA by the Inspector General of Police, were inadmissible as they were not properly certified in accordance with s 76 of Evidence Act 1950 in that the certificates were not dated, resulting the detention being unlawful. In view of his appointment being challenged, the officer concerned attempted to produce exh 'SP–1' to prove his appointment. Counsel for the respondent at this juncture applied for a short adjournment in order to file further affidavit to clarify the matter in dispute. In the further alternative, he urged upon the court under s 425 Criminal Procedure Code (FMS Cap 6) ('the CPC') to call such person to give evidence in order to arrive at a just decision.

Held, applications allowed:

(1) Section 76 of the Evidence Act 1950 is clear and requires exh 'SP–1' to be dated, in the absence of which it is inadmissible as certified copy (see p 378G).

(2) Although s 114(e) Evidence Act 1950 provides that the court may presume that judicial and official acts have been regularly performed, in this case, however, in view of the ruling that exh 'SP–1' was inadmissible, the court must hold that it has not been proved beyond a reasonable doubt that the police officer concerned was such designated officer under s 73(3)(c) of the ISA (see p 378H).

(3) The court has the discretion to allow an adjournment. As the application for adjournment was made at such late stage of the proceedings and also in view of the nature of the application, the adjournment was disallowed (see p 379A).

(4) The application of s 425 of the CPC would require the court to summon a witness to testify in order to cure the infirmity of exh 'SP–1' in the applications. This the court declines to do (see

p 379B); *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285 followed.

[Bahasa Malaysia summary

Kedua-dua pemohon telah ditangkap dan ditahan oleh penentang di bawah s 73 Akta Keselamatan Dalam Negeri 1960 ('Akta tersebut'). Permohonan-permohonan telah difailkan untuk mempersoalkan keesahan penangkapan dan penahanan pemohon-pemohon. Ia telah dikemukakan bahawa eks 'SP–1' berkaitan dengan pemohon-pemohon, umpamanya kuasa pelantikan di bawah s 73(3)(c) Akta tersebut oleh Ketua Polis Negara, adalah tidak boleh diterima sebab ia tidak diperakui dengan baik menurut s 76 Akta Keterangan 1950 iaitu sijil-sijil tidak bertarikh, mengakibatkan penahanan tersebut menyalahi undang-undang. Memandangkan pelantikan sedang dicabar, pegawai berkenaan cuba mengeluarkan eks 'SP–1' untuk membukti pelantikannya. Peguam untuk pihak penentang pada masa ini memohon untuk penangguhan singkat untuk memfailkan afidavit selanjutnya untuk menjelaskan perkara tersebut dalam pertikaian. Dalam alternatif selanjutnya, beliau mendorong mahkamah di bawah s 425 Kanun Acara Jenayah (NMB Bab 6) ('KAJ') untuk memanggil orang sebegini untuk memberi keterangan supaya boleh tiba di keputusan yang adil.

Diputuskan, membenarkan permohonan-permohonan:

(1) Seksyen 76 Akta Keterangan 1950 adalah terang dan memerlukan eks 'SP–1' bertarikh, ketiadaannya menyebabkannya tidak boleh diterima sebagai salinan diperakui (lihat ms 378G).

(2) Walaupun s 114(e) Akta Keterangan 1950 mensyaratkan bahawa mahkamah boleh membuat anggapan bahawa tindakan kehakiman dan rasmi telah dijalankan dengan biasa, dalam kes ini, walau bagaimanapun, memandangkan arahan bahawa eks 'SP–1' adalah tidak boleh diterima, mahkamah mesti memutuskan bahawa ia tidak dibukti melampaui keraguan munasabah yang pegawai polis berkenaan adalah pegawai yang dinamai di bawah s 73(3)(c) Akta tersebut (lihat ms 378H).

(3) Mahkamah mempunyai budi bicara untuk membenarkan penangguhan. Oleh kerana permohonan untuk penagguhan telah dibuat pada peringkat lewat prosiding dan memandangkan sifat permohonan tersebut, penangguhan tersebut tidak dibenarkan (lihat ms 379A).

(4) Pengunaan s 425 KAJ menghendaki mahkamah untuk memanggil saksi untuk memberi keterangan supaya menyembuhkan kelemahan eks 'SP–1' di dalam permohonan-permohonan tersebut. Mahkamah enggan membuat begini (lihat ms 379B); *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285 diikut.]

Notes

For cases on documentary evidence, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 688–789.

Cases referred to

Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 3 MLJ 285 (folld)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) s 425
Evidence Act 1950 ss 76, 114(e)
Internal Security Act 1960 s 73, (3)(c)

Karpal Singh (*Gobind Singh* with him) (*Karpal Singh & Co*) for the accused.

Abdul Alim Abdullah (*Mohd Abazafree bin Mohd Abbas* with him) (Deputy Public Prosecutors) for the respondent.

Chin Fook Yen J: By notice of motion filed in this court, both the applicants applied for a writ of habeas corpus to issue directed to the respondent in his official capacity as Inspector General of Police, Malaysia.

The facts may be briefly stated as follows. It was not in dispute that between 2 November 1997 and 7 November 1997, both the applicants were among others arrested and detained by the respondent. On 25 November 1997, counsel for applicants by letter sought permission of the respondent to visit the applicants, but in vain. The respondent by letter dated 28 November 1997 confirmed the arrest and detention of the applicants under s 73 of the Internal Security Act 1960 ('the ISA') and stated the reason that the matter was still under investigation in refusing the request of the counsel. Due to constraint of time and expense, the wife of the first applicant affirmed an affidavit in support of the application for both the applicants. In her affidavit encl 4, altogether eight grounds were advanced to impugn the legality of the arrest and detention of the applicants. There is no necessity for the court to go over all the eight grounds, because somewhere towards the end of his submission, counsel for the applicants abandoned all, but one of the grounds in support of the application and the ground is that there has been a breach of the provisions of s 73(3)(c) of the ISA which reads:

> Power to detain suspected persons
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> ...
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> (3) Any person arrested under this section may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under section 8:

Provided that — A

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(c) .he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf, who shall forthwith report the same to the Minister. B

In particular, he submitted that exh 'SP–1' in respect of both the applicants, viz the designation power under s 73(3)(c) of the ISA by Inspector General of Police, were inadmissible as they were not properly certified in accordance with s 76 of Evidence Act 1950 in that the certificates were not dated. C

Section 76 of Evidence Act 1950 reads:

Certified copies of public documents

Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at D the foot of the copy, that it is a true copy of the document or part thereof, as the case may be, and *the certificate shall be dated* and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorized by law to make use of a seal, and the copies so certified shall be called certified copies. (Emphasis added.)

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It should follow, he continued, that if the exh 'SP–1' is ruled inadmissible, then s 73(3)(c) ISA has not been complied with and there would be a breach, resulting the detention being unlawful.

The issue, therefore, is whether the police officer concerned was such designated officer as required by s 73(3)(c) ISA.

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In reply, counsel for the respondent submitted that even if exh 'SP–1' were inadmissible, the said police officer has in his affidavits encl 16 and encl 10, affirmed that he was 'seorang pegawai yang ditetapkan oleh Ketua Polis Negara mengikut peruntukan di bawah s 73(3)(c) Akta Keselamatan Dalam Negeri 1960 untuk menerima laporan atas keadaan penangkapan dan penahanan orang yang ditangkap di bawah s 73(1) AKDN 1960 dan G melaporkan perkara yang sama kepada Menteri Dalam Negeri Malaysia'.

That exh 'SP–1' in each case has been so certified as true copy is not denied. It is equally true that the same is not dated is also not denied. Section 76 Evidence Act 1950 is clear and it requires exh 'SP–1' to be dated, in the absence of which it is inadmissible as certified copy. I hold H therefore, exh 'SP–1' in both the applications inadmissible, as such.

I am mindful of s 114(e) Evidence Act 1950, that the court may presume that judicial and official acts have been regularly performed. However, in view of his appointment being challenged, the officer concerned attempted to produce exh 'SP–1' to prove his appointment. In view of my ruling that exh 'SP–1' being inadmissible, it is my view that it has not been I proved beyond a reasonable doubt that the police officer concerned was such designated officer under s 73(3)(c) of the ISA.

A But that is not the end of the matter, counsel for the respondent at this juncture applied for a short adjournment in order to file further affidavit to clarify the matter in dispute. In the further alternative, he urged upon the court under s 425 Criminal Procedure Code (FMS Cap 6) ('the CPC') to call such person to give evidence in order to arrive at a just decision.

B Whether or not to allow an adjournment is the discretion of the court. In view of the application for adjournment made at such late stage of the proceedings and also in view of the nature of the application, the court declines to allow an adjournment.

It has been urged upon the court, to apply s 425 of the CPC to call in C such additional evidence of a technical nature in order to arrive at a just decision. What was asked of the court was to summon a witness to testify in order to cure the infirmity of exh 'SP–1' in both the applications. The court declines to do so, being bound by the Supreme Court decision in the case of *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285 where the court has rejected a similar application D under s 425 of the CPC for additional evidence to be admitted.

For reasons aforesaid, the applications are allowed. Both the applicants are to be produced before this court on Monday, 22 December 1997 at 2.30pm and to be set free.

Applications allowed.

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Reported by Loo Lai Mee

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